

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.672 OF 2004**

Sarubai Gudappa Bandichode & Ors. ...Appellants

Vs.

Suresh Nagnath Mane & Anr. ...Respondents

Mr I.M. Khairdi for the Appellants.

Mr C.M. Lokesh i/by G.S. Hedge for the Respondent
No.2.

CORAM : A. S. OKA, J.

DATE : MARCH 28, 2006.

P.C.:

1. Notice for final disposal of the Appeal at admission stage has been already issued. The office noting shows that the Respondent No.1 is duly served.

2. The Appeal is preferred by the original claimants challenging the judgment and order dated 20th March, 2004 passed by the learned Chairman of the Motor Accident Claims Tribunal at Solapur. The Appellants-Applicants filed a Claim Petition under section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of husband of the Appellant No.1. The case of the Appellants is that the accident was caused due to rash and negligent driving on the part of the bus owned by the Respondent No.2-Corporation bearing registration No.MH12/R-1044. The case of the Respondents was that the said bus was

not at all involved in the accident. The Claim Petition was dismissed on the ground that the Appellants failed to prove that the death of the deceased was caused on account of accident involving the said bus owned by the Respondent No.2.

3. The learned Counsel appearing for the Appellants has annexed a statement dated 11th May, 1997 recorded by the police of one Sunila Bhimashankar Jangalgi. He pointed out that said statement discloses that on the date of the accident the said constable was a passenger in the said bus and because of the efforts of the said constable, bus could be traced. He relied upon supplementary statement of the said police constable as well as the statements recorded by the police of two other witnesses. He submitted that due to illiteracy and various reasons the Appellants could not examine the said persons as witnesses. He submitted that if Appellants are granted permission to examine the said witnesses, the Appellants will be in a position to establish their case.

4. The office noting shows that the Respondent No.1 is duly served with the notice. The learned Advocate for the Respondent No.2 opposed the Appeal by submitting that the Appellants had opportunity to lead evidence and at this stage, they cannot be permitted to lead evidence.

5. I have considered the submissions. The Appellants are claimants who have claimed compensation on account of a fatal accident. The Claim Petition has been dismissed on the ground that the evidence led by the Appellants was not sufficient to establish involvement of the bus owned by the Respondent No.2. Now the Appellants desire to lead additional evidence by examining certain witnesses whose statements were recorded by the police. One of the alleged witnesses is a police constable who was allegedly travelling by the said bus when the accident took place.

6. In my view, as the Claim Petition has been dismissed by the Tribunal, in the interest of justice one more opportunity deserves to be granted to the Appellants to lead evidence by remanding the Claim

Petition to the Tribunal.

7. Hence, I pass the following order:

- (i) The impugned Judgment and Award dated 20th March, 2004 is quashed and set aside and Claim Petition being M.A.C. Petition No.422 of 1997 is restored to the file of the concerned Tribunal.
- (ii) The parties are directed to appear before the Tribunal on 05th June, 2006 for fixing the schedule of hearing. The Tribunal will issue notice to the Respondent No.1. However, notice to the Respondent No.2 will not be necessary as the Respondent No.2 is represented before this Court.
- (iii) The Tribunal will allow the Appellants and the Respondents to lead additional evidence.
- (iv) Claim Petition will be decided afresh as expeditiously as possible and preferably on or

before 27th March, 2007.

(v) All contentions of the parties are kept open.

(vi) Parties and concerned Tribunal to act upon an authenticated copy of this order.

JUDGE